

STATE OF MICHIGAN
COURT OF APPEALS

RONALD TUCKER and MARYANN TUCKER,

Plaintiffs/Counter-Defendants,

v

BRADFORD RANSON and ELIZABETH
RANSON,

Defendants/Cross-
Plaintiffs/Counter-Plaintiffs-
Appellants/Cross-Appellees,

and

YORK TIMBER RIDGE ASSOCIATION,

Defendant/Cross-Defendant-
Appellee/Cross-Appellant.

UNPUBLISHED

July 31, 2008

No. 276976

Washtenaw Circuit Court

LC No. 04-001163-CH

Before: Sawyer, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Cross-plaintiffs, Bradford and Elizabeth Ranson (“the Ransons”), appeal as of right the trial court’s order granting summary disposition for cross-defendant, York Timber Ridge Association (“York” or “the association”), in this real property dispute. In addition, York cross appeals the trial court’s order holding its motion for sanctions in abeyance. We affirm.

The Ransons own lot 42 in the York Timber Ridge subdivision in York Township, Michigan. The association is responsible for enforcing the subdivision’s Building and Use Restrictions (“the restrictions”), which were incorporated by reference into the association’s by-laws. This appeal arises from York’s failure to approve the Ransons’ building plans and its denial of their request for a variance from the restrictions. It is undisputed that the Ransons began building a home on their lot before York, through its Architectural Review Committee (“ARC”), approved their building plans. The Ransons ceased construction and requested site approval, which the ARC denied because the plans failed to comply with the restrictions. The Ransons thereafter applied for a variance from the restrictions, which the ARC granted in part and denied in part. The ARC granted the variance request regarding the location of the home on the rear of the property, but denied the request in all other respects.

Plaintiffs Ronald and Maryann Tucker, the Ransons' neighboring property owners, filed suit against the Ransons and York seeking to enjoin further construction on the Ransons' property and to require York to enforce the restrictions with respect to the Ransons' property.¹ The Ransons filed a cross-claim against York seeking to compel York to grant their variance request. Both the Ransons and York filed motions for summary disposition. The trial court determined that the Ransons did not have standing to compel York to approve their variance request or their building plans and granted York's motion. Thereafter, the court held York's motion for sanctions in abeyance. Both the Ransons and York appeal the trial court's rulings.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists and the moving party is entitled to judgment as a matter of law. *A&E Parking v Detroit Metro Wayne Co Airport Auth*, 271 Mich App 641, 644; 723 NW2d 223 (2006).

The Ransons argue that the trial court erroneously determined that they do not have standing to compel the association to approve their site plans or to grant their request for a variance. However, a careful examination of the restrictions and the pleadings reveals the argument is without merit.

It is a fundamental principle that property owners are free to improve their property and to attempt to enhance the value of their property in any lawful way, including by contract. *Terrien v Zwit*, 467 Mich 56, 71; 648 NW2d 602 (2002). A covenant running with the land is a contract created to enhance the value of property and, accordingly, is a "valuable property right." *Id.* In an action to enforce a covenant, the intent of the drafter controls, and where the language of a restriction is clear, the parties are confined to the language employed. *Stuart v Chawney*, 454 Mich 200, 210; 560 NW2d 336 (1997); *Moore v Kimball*, 291 Mich 455, 461; 289 NW 213 (1939).

The restrictions provide, in pertinent part:

Section 2. Architectural Control. No dwelling, structure or other improvement shall be constructed within a building site, nor shall any exterior modification be made to any existing dwelling, structure or improvement, *unless a plot plan and building plans and specifications therefor[e] containing such detail as the undersigned may reasonably request have first been approved by the undersigned. . . . The undersigned shall have the right to refuse to approve any such plans or specifications or grading or landscaping plans which are not suitable or desirable in its opinion for aesthetic or other reasons*; and in passing upon such plans and specifications it shall have the right to take into consideration the suitability of the proposed structure, improvement or modification, proposed exterior materials . . . and exterior colors which shall blend in with existing residences and the natural surroundings, the site upon which it is proposed to be

¹ Plaintiffs' claims against the Ransons and York are not at issue in this appeal.

constructed, the location of the dwelling within each building site, and the degree of harmony thereof with the Project as a whole. . . . The purpose of this Section is to assure the continued maintenance of the Project as a beautiful and harmonious residential development, and shall be binding upon all owners. The undersigned's rights under these Restrictions may, in the undersigned's discretion, be assigned to the York Timber Ridge Association, a Michigan non-profit corporation, or other successor to the undersigned. Said rights shall automatically be assigned to the Association at the time that the undersigned, or its successor land developer, no longer owns any land contained in the legal description appearing hereinabove.

* * *

Section 11. Reserved Rights of the Undersigned.

* * *

(c) Enforcement of Restrictions. The Project shall at all times be maintained in a manner consistent with the highest standards of a beautiful, serene, private residential community for the benefit of the owners and all persons interested in the Project. . . . The undersigned shall have the right to enforce these restrictions as long as it owns a building site in the Project, which right of enforcement shall include (without limitation) an action to restrain any owner from any activity prohibited by these restrictions, and thereafter the enforcement of these restrictions shall be made by the York Timber Ridge Association. . . .

(d) Variances. *The undersigned reserves the right, within its sole discretion, to grant variances from these restrictions on a case by case basis for specific residences.* [Emphasis added.]

In their cross-claim, the Ransons asserted that the association's refusal to approve their building plans or to grant them a variance was "a denial of the[ir] rights and privileges as Association members under the Association's by-laws." However, the restrictions do not afford the Ransons any such "rights or privileges." Rather, Section 11(c) of the restrictions provides that, after the "undersigned" no longer owns any building site within the subdivision, "enforcement of these restrictions shall be made by the York Timber Ridge Association."² Section 2 of the restrictions granted the association "the right to refuse to approve any such [building] plans . . . which are not suitable or desirable in its opinion for aesthetic or other reasons," and Section 12(d) reserved to the association the right, "within its sole discretion," to grant variances from the restrictions. The Ransons have no "right or privileges" as association members to compel the association to approve their building plans or to grant them a variance. The rights to approve building plans and to grant variances were given exclusively to the

² The "undersigned" was Raymond J. LeVan, who signed the restrictions on behalf of Judd Rd Properties, LLC, the developer of the York Timber Ridge subdivision. There is no dispute that Judd Rd Properties no longer owns any building site within the subdivision.

association. Consequently, the trial court did not err in granting summary disposition to the association.³

On cross appeal, York challenges the trial court's failure to award it costs and attorney fees. At the time that the trial court granted summary disposition for York, it specifically stated that it was "not awarding attorney fees at this time." Following the trial court's ruling, York moved for sanctions on the basis of Article IX, Section 7, of the association's by-laws, which provides:

All attorney fees and costs incurred in enforcing the Building and Use Restrictions will be charged to the owner of the parcel involved in the violation.

At a hearing on the motion, counsel for York asserted that the Ransons had filed a second action against York as well as an action against an association board member. Counsel maintained that that action was assigned to the same trial court judge as the instant case and that the matters involved in that lawsuit had already been addressed in this case. The trial court directed counsel to file a motion for summary disposition in the second action and stated:

And when I see that one, you remind me of this one and what we can do is when you file your motion for summary disposition, if I agree with your position that it's just a rehashing of the same thing I've already ruled on and already decided, then – if I find that's true, then the likelihood is great you'll get your attorney fees for responding to that and this one. You'll get them both. If I find it's different, I'll hear the argument and then I'll decide, but I'd like to have that properly framed before I rule on it.

Thus, the trial court held York's motion in abeyance.

Although York contends that the trial court failed to rule on its motion for sanctions, the record shows otherwise, i.e., that the court held the motion in abeyance pending counsel's motion for summary disposition in the related case. Therefore, the trial court did not fail to rule on the issue or refuse to determine whether York was entitled to sanctions. Moreover, we decline to address this issue before the trial court has done so.

³ This is not to say that landowners do not have the ability to challenge the actions of an association with similar exclusive rights to the extent that the association's actions may have been arbitrary, capricious, or unreasonable. See *West Bloomfield Co v Haddock*, 326 Mich 601, 612-613; 40 NW2d 738 (1950). In this case, however, the Ransons did not allege in their cross-claim that the association's refusal to approve their building plans or to grant them a variance was arbitrary, capricious, or unreasonable.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Joel P. Hoekstra